

CITY OF MUSKEGON
DOWNTOWN DEVELOPMENT AUTHORITY ("DDA") / BROWNFIELD
REDEVELOPMENT AUTHORITY

SPECIAL MEETING

DATE OF MEETING: **Thursday, February 27, 2020**
TIME OF MEETING: **9:00 AM**
PLACE OF MEETING: **Muskegon Lakeshore Chamber
Training Room
380 W. Western Ave., Suite 202**

AGENDA

- I. Roll Call
- II. Brownfield Redevelopment Authority Business
 - A. Authorization of BRA chair to sign Sweetwater consent to assignment/Dave Alexander
 - B. Authorization for chair to sign future consent to assignment agreements/Dave Alexander
 - C. Brownfield training
- III. Adjourn

AMERICAN DISABILITY ACT POLICY FOR ACCESS TO OPEN MEETING OF THE
CITY COMMISSION AND ANY OF ITS COMMITTEES OR SUBCOMMITTEES

The City of Muskegon will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities who want to attend the meeting, upon 24- hour notice to the City of Muskegon. Individuals with disabilities requiring auxiliary aids or services should contact the City of Muskegon by writing or calling the following: Ann Marie Meisch, City Clerk at 933 Terrace Street, Muskegon, MI 49440 or by calling (231) 724-6705 or TTY/TDD: Dial 7-1-1 and request that a representative dial 231-724-6705

AGENDA ITEM II (A) – Sweetwater consent to assignment agreement

STAFF SUMMARY

**292 W. Western Brownfield Plan
acknowledgement and consent to assignment**

Requesting party: Sweetwater Development LLC and Chemical Bank

Outline of the request: Provide authorization to the BRA chair to sign the proposed acknowledgement and consent to assignment document presented by Sweetwater Development LLC and its lending institution Chemical Bank.

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Background: Sweetwater Development LLC, developer of The Leonard Building at 292 W. Western, has an approved brownfield plan and the BRA has a development and reimbursement agreement with Sweetwater. In securing bank financing, the attached security and collateral assignment includes the bank's potential capture of the Tax Increment Finance payments to Sweetwater. The BRA needs to acknowledge this. There is no financial implication for the BRA or the city. In your packet is the proposed bank security and collateral assignment agreement of Sweetwater and the BRA's acknowledgement and consent.

Staff recommendation: Approve the attached consent (Dave Alexander)

Suggested motion: I move to authorize/not authorize the Brownfield Redevelopment Authority chair to sign the acknowledgement and consent to assignment agreement for Sweetwater Development LLC (The Leonard/292 W. Western) and Chemical Bank.

ACKNOWLEDGMENT AND CONSENT TO ASSIGNMENT

THE CITY OF MUSKEGON BROWNFIELD REDEVELOPMENT AUTHORITY ("BRA") hereby acknowledges and consents to the foregoing Assignment and agrees (as limited herein) to the Borrower collaterally assigning to Chemical Bank, a division of TCF National Bank (the "Lender"), and granting the Lender a security interest in Borrower's rights to reimbursement of its Eligible Costs under the Brownfield Development and Reimbursement Agreement dated August 13, 2019 realized from Borrower's Project (as identified in the Development and Reimbursement Agreement) subject to the terms and conditions of the Development and Reimbursement Agreement.

BRA agrees that there shall be no amendment or modification of the Development and Reimbursement Agreement without the prior written consent of Lender.

To the best of its knowledge, BRA has not received any notices of any prior assignment of the Development and Reimbursement Agreement by Borrower.

This Acknowledgment shall be binding upon and inure to the benefit of the successors and assigns of BRA and Lender.

This Acknowledgment shall be governed by and construed in accordance with the laws of the State of Michigan.

CITY OF MUSKEGON BROWNFIELD
REDEVELOPMENT AUTHORITY

By: _____

Dated: _____, 2020

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**SECURITY AGREEMENT AND COLLATERAL ASSIGNMENT
(Brownfield)**

FOR VALUE RECEIVED, SWEETWATER DEVELOPMENT PARTNERS, LLC, a Michigan limited liability company, with offices at 22 South Harbor Drive, Suite 101, Grand Haven, MI 49503 ("Borrower"), does hereby grant, assign and transfer to CHEMICAL BANK, a division of TCF National Bank, with offices at 150 Ottawa Avenue NW, Suite 900, Grand Rapids, Michigan 49503 ("Lender"), a security interest and all of its other right, title and interest in and to (a) Borrower's accounts and general intangibles, now or in the future owned or inuring to the benefit of Borrower, and any and all rights related thereto, including without limitation, that certain Brownfield Development and Reimbursement Agreement dated as of August 13, 2019, (the "Reimbursement Agreement"), by and between the City of Muskegon Brownfield Redevelopment Authority (the "BRA") and Borrower, as the same may be amended from time to time, including, without limitation, rights to reimbursement thereunder for Borrower's project located at 292 W. Western Ave, and (b) all proceeds of the foregoing (collectively, the "Collateral").

This Security Agreement and Collateral Assignment (the "Security Agreement and Assignment") is given to secure the full and prompt payment, whether at stated maturity, accelerated maturity or otherwise, of any and all indebtedness, whether fixed or contingent (collectively the "Indebtedness") and the complete, faithful and punctual performance of any and all other obligations (collectively the "Obligations") of Borrower to Lender under the terms and conditions of (a) the Construction Loan Agreement dated as of even date herewith by and between Borrower and Lender (as amended, the "Construction Loan Agreement"); (b) Promissory Note No. 1 (Chemical), dated as of even date herewith made by Borrower to Lender in the original principal amount of Five Million Nine Hundred Thousand and 00/100 Dollars (\$5,900,000) and any and all renewals, amendments, modifications, reductions and extensions thereof and substitutions therefor (collectively, the "Construction Note"); (c) Promissory Note No. 2 (MCRP) of even date herewith, made by Borrower to Lender, in the original principal amount of One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000) and any and all renewals, amendments, modifications, reductions and extensions thereof and substitutions therefor (collectively the "MCRP Note," and, together with the Construction Note, the "Notes"); (d) the Construction Leasehold Mortgage dated as of even date herewith (the "Security Interest"); and (e) any other instrument, document, certificate or affidavit heretofore, now or hereafter given by Borrower evidencing or securing or by any person guaranteeing all or any part of the foregoing (the same, together with the Construction Loan Agreement, the Notes, the Security Instrument and all other documents evidencing or securing the obligations are hereinafter referred to as the "Loan Documents").

Borrower represents and warrants to Lender that the Collateral is free from any previous security interest, pledge, mortgage, encumbrance, assignment, transfer or sale. Further, Borrower agrees not to grant a security interest in or pledge, mortgage, encumber, assign, transfer or sell its interest in the Collateral so long as this Security Agreement and Assignment is in effect.

Borrower agrees to provide Lender with copies of all reports, statements and certificates provided to the BRA relating to Borrower or the Property and all other documents relating thereto reasonably requested by Lender promptly upon receipt of a written request therefor.

Borrower shall execute and/or deliver to Lender at any time and from time to time hereafter at the request of Lender all agreements, instruments, documents and other written matter that Lender may reasonably request in a form and substance reasonably acceptable to Lender, to perfect and maintain perfected Lender's security interest in the Collateral. Lender may file financing statements to perfect and continue perfection of its security interest without Borrower's signature. Borrower shall immediately notify Lender in writing of any change in Borrower's name, or company structure, and of any change in the location of Borrower's jurisdiction of organization.

Borrower irrevocably constitutes and appoints Lender as its agent and attorney-in-fact to demand, enforce and receive Borrower's rights with respect to the Collateral, and to do any and all acts in the name of Lender with the same force and effect as Borrower could do if this Security Agreement and Assignment had not been made.

This Security Agreement and Assignment shall be binding upon and inure to the benefit of the successors and assigns of Borrower and Lender. This Security Agreement and Assignment is assignable by Lender to any subsequent holder of the Notes.

This Security Agreement and Assignment shall be governed by and construed in accordance with the laws of the State of Michigan. In addition to any rights and remedies granted to Lender hereunder, Lender shall have all rights and remedies of a secured party under the Uniform Commercial Code as enacted in the State of Michigan.

If and when the Indebtedness shall have been fully paid and satisfied and the Obligations have been fully performed without the necessity of Lender exercising its rights hereunder, this Security Agreement and Assignment shall terminate and thereafter be of no effect.

[signature page follows]

IN WITNESS WHEREOF, Borrower has caused this Security Agreement and Assignment to be executed on the ____ day of _____, 2020.

SWEETWATER DEVELOPMENT
PARTNERS, LLC

By: _____

Corey Leonard

Its: Manager

STATE OF MICHIGAN)
) SS.
COUNTY OF _____)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Corey Leonard, the Manager of **SWEETWATER DEVELOPMENT PARTNERS, LLC**, a Michigan limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this ____ day of _____, 2020.

_____, Notary Public

_____, County, Michigan

Acting in _____ County, Michigan

My commission expires: _____

AGENDA ITEM II (B) – Authorization for future signatures

STAFF SUMMARY

Authorization for BRA chair to sign future consent to assignment requests

Requesting party: City staff and city attorney

Outline of the request: There may be future requests for acknowledgement and consent to assignment agreements. As long as there are no financial implications for the Brownfield Redevelopment Authority and the city, staff would like prior approval to have the BRA chair sign those on your behalf.

Background: The city does not want to delay bank financing for Brownfield Redevelopment Authority projects due to the BRA chair's signature on documents such as the Sweetwater/Chemical Bank agenda item. City Attorney John Schrier suggested we get prior authorization for the BRA chair's signature in the future so as not to delay development by waiting until the monthly BRA meeting.

Staff recommendation: Approve the motion (Dave Alexander)

Suggested motion: I move to authorize/not authorize the Brownfield Redevelopment Authority chair to sign future acknowledgement and consent assignment agreements for approved brownfield plans when there are no financial implications for the BRA or city.